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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,168	12/30/2003	Robert Zidar	059969-0001	8986
20572	7590	04/07/2006	EXAMINER PICO, ERIC E	
GODFREY & KAHN S.C. 780 NORTH WATER STREET MILWAUKEE, WI 53202			ART UNIT 3654	PAPER NUMBER

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,168	ZIDAR ET AL.	
	Examiner	Art Unit	
	Eric Pico	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8-11, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Vache U.S. Patent No. 6840714.
3. **Regarding claim 1**, Vache discloses a lifting assembly 10 for raising and supporting a load 13. The lifting assembly 10 comprised of a removable and reusable lifting bracket 15, a support bracket 16 for attachment to the load 13, the support bracket 16 having a tubular member 14 depending therefrom, the lifting bracket 15 removably positioned under the support bracket 16 and at least partially surrounding the tubular member 14, and a jacking apparatus 11 having one end removably attached to the lifting bracket 15 and another end attached to a piercing pole 12 above the lifting bracket 15.
4. **Regarding claim 8**, Vache further discloses a piercing pole 12 extending through the support bracket 16 and lifting bracket 15.

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5. **Regarding claim 9**, Vache further discloses the support bracket 16 installed on the piercing pole 12 for engaging the edge of the load 13.
6. **Regarding claim 10**, Vache further discloses the lifting bracket 15 removably attached to a jacking apparatus 11 for pushing or pulling the piercing pole 12 through the support bracket 16 and into the ground.
7. **Regarding claim 11**, Vache further discloses the jacking apparatus 11 attached to the lifting bracket 15 and the other end of the jacking apparatus 11 attached to an upper end of the piercing pole 12.
8. **Regarding claim 18**, Vache further discloses a method for raising and supporting a load 13. The method for raising and supporting a load 13 comprising the steps of attaching a lifting assembly 10 to a load to be raised and supported. Attaching a support bracket 16 of the lifting assembly 10 to the load. Attaching a removable and reusable lifting bracket 15 substantially under and around the support bracket 16. Attaching a jacking apparatus 11 to the lifting bracket 15 and a pier driving pole 12. Lifting the load 13 attached to the support bracket 16 with the jacking apparatus 11 attached to the lifting bracket 15 supporting the support bracket 16. Removing the jacking apparatus 11 from the lifting bracket 15 and pier driving pole 12. Removing the lifting bracket 15 from around the support bracket 16. Anchoring the pier driving pole 12 to the support bracket 16 for supporting the load 13 thereon. Reusing the entire lifting bracket 15 on other lifting assemblies or piercing systems.

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 5, 6, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vache U.S. Patent No. 6840714 in view of May U.S. Patent No. 6193442.

11. **Regarding claim 5**, Vache discloses semi-circular convex members 18, 19 attached to the rear of the spaced-apart L-shaped lifting members 15R, 15L.

12. Vache is silent concerning a pair of semi-circular convex members and horizontal and vertical bracing members.

13. May teaches a pair of horizontal bracing members 13 attached to the rear of spaced-apart L-shaped lifting members 18 and a pair of vertical bracing members 12 extending between the pair of horizontal bracing members 13.

14. It would have been obvious to one of ordinary skill in the art at the time of the invention to add an additional semi-circular convex member disclosed by Vache and attach a pair of horizontal bracing members to the rear of the spaced-apart L-shaped lifting members and between the semi-circular convex members and a pair of vertical members extending between the pair of horizontal bracing members taught by May to add additional strength and support to the lifting member.

15. **Regarding claim 6**, Vache is silent concerning an opening.

16. It would have been obvious to one of ordinary skill in the art at the time of the invention to form an opening between the spaced-apart L-shaped members 15 and

convex members 18, 19 disclosed by Vache and the horizontal bracing members 13 taught by May to reduce the weight of the lifting assembly to facilitate transport and assembly of the lifting assembly.

17. **Regarding claim 17**, Vache further discloses a removable and reusable lifting bracket 15 for use on a foundation piercing system. The lifting bracket 15 comprised of a pair of spaced-apart L-shaped lifting members 15L, 15R and semi-circular convex members 18, 19 attached to the rear of the spaced-apart L-shaped lifting members 15L, 15R. The lifting bracket 15 designed to fit substantially around the tubular member 14 of a support bracket 16 of the lifting assembly 10.

18. Vache is silent concerning a pair of semi-circular convex members and horizontal and vertical bracing members.

19. May further teaches a pair of horizontal bracing members 13 attached to the rear of spaced-apart L-shaped lifting members 18 and a pair of vertical bracing members 12 extending between the pair of horizontal bracing members 13.

20. It would have been obvious to one of ordinary skill in the art at the time of the invention to add an additional semi-circular convex member disclosed by Vache and attach a pair of horizontal bracing members to the rear of the spaced-apart L-shaped lifting members and between the semi-circular convex members and a pair of vertical members extending between the pair of horizontal bracing members taught by May to add additional strength and support to the lifting member.

21. It would have further been obvious to one of ordinary skill in the art at the time of the invention to form an opening between the spaced-apart L-shaped members 15 and

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convex members 18, 19 disclosed by Vache and the horizontal bracing members 13 taught by May to reduce the weight of the lifting assembly to facilitate transport and assembly of the lifting assembly.

22. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vache U.S. Patent No. 6840714 in view of Seider et al. U.S. Patent No. 5213448.

23. **Regarding claim 7**, Vache discloses a support bracket 16 and an L-shaped member 16 attached to the tubular member 14 for supporting a load thereon.

24. Vache is silent concerning a horizontal member.

25. Seider et al. teaches a substantially horizontal top member 40 having an opening 42 extending therethrough for receiving the top of a tubular member.

26. It would have been obvious to one of ordinary skill in the art at the time of the invention to attach the horizontal top member taught by Seider et al. to the top of the tubular member disclosed by Vache to further strengthen the support member.

27. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vache U.S. Patent No. 6840714 in view of McCown, Jr. et al. U.S. Patent No. 4925345.

28. **Regarding claim 12**, Vache is silent concerning the jacking apparatus 11 including a support brace.

29. McCown, Jr. et al. teaches a jacking apparatus 10 including a support brace 24 located about the lifting bracket 24.

30. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the support brace as taught by McCown, Jr. et al. to the jacking apparatus 11 disclosed by Vache to facilitate the lifting of a load by the lifting member.

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31. **Regarding claim 13**, Vache is further silent concerning a support brace including a circular sleeve, two support wings, and a pair of hydraulic rams.

32. McCown, Jr. et al. further teaches a support brace 24 including a circular sleeve 56 that encircles a piercing pole 18, two support wings 52, 54 extending in opposite directions from the circular sleeve 56, and a pair of hydraulic rams 60, 62 oriented on either side of and running parallel to the piercing pole 18.

33. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a circular sleeve, two support wings, and a pair of hydraulic rams to the support brace as taught by McCown, Jr. et al. to the jacking apparatus 11 disclosed by Vache to facilitate the lifting of a load by the lifting member.

34. **Regarding claim 14**, Vache is further silent concerning hydraulic rams connected to a lifting bracket and a support brace.

35. McCown, Jr. et al. further teaches hydraulic rams 60, 62 connected to respective wings 25, 26 of the lifting bracket 24 and support wings 52, 54 of the support brace 34.

36. It would have been obvious to one of ordinary skill in the art at the time of the invention to connect the hydraulic rams to the lifting bracket and the support brace as taught by McCown, Jr. et al. in the lifting assembly disclosed by Vache to facilitate the lifting of a load by the lifting member.

37. **Regarding claim 16**, Vache discloses a lifting assembly 10 for raising and supporting a load 13. The lifting assembly 10 comprised of a pier driving pole 12. A support bracket 16 including a tubular member 14 for receiving a pier driving pole 12. A

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removable and reusable lifting bracket 15 that removably fits at least partially around the tubular member 14 of the support bracket 16.

38. Vache is silent concerning a ram support brace and a pair of hydraulic rams.

39. McCown, Jr. et al. further teaches a ram support brace 34 located above a lifting bracket 24 and including a circular sleeve 56 for receiving a pier driving pole 18 therein.

The ram support brace 34 having two support wings 52, 54 extending in opposite directions from the circular sleeve 56. A pair of hydraulic rams 60, 62 oriented on either side of and running parallel to the pier driving pole 18. The hydraulic rams 60, 62 connecting the respective sides of the lifting bracket 24 and the support wings of the ram support brace 34.

40. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a ram support brace and a pair of hydraulic rams taught by McCown, Jr. et al. to the lifting assembly disclosed by Vache to facilitate the lifting of a load by the lifting member.

Response to Arguments

41. Applicant's arguments filed 03/09/2006 have been fully considered but they are not persuasive.

42. With respect to applicant's argument that it is improper to combine Vache U.S. Patent No. 6840714 in view of the teachings of May U.S. Patent No. 6193442 because May teaches away from the use of a lifting bracket that is separate from the support bracket. The argument that May teaches away from Vache relies upon the assertion

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that because May discusses the advantages of "welding two support plates", May teaches away from Vache. This argument is without merit because, while the preferred embodiment of May does show a bracket welded to two support plates, a statement indicating the desirability of having a bracket welded to two support plates in no way criticizes, discredits, or otherwise discourages the solution of incorporating horizontal bracing members attached to a rear of spaced-apart L-shaped lifting members and a pair of vertical bracing members extending between the pair of horizontal bracing members claimed. May, therefore, in no way teaches away from Vache.

43. With respect to applicant's argument that it is improper to combine Vache U.S. Patent No. 6840714 in view of the teachings of McCown, Jr. et al. U.S. Patent No. 4925345 because McCown, Jr. et al. teaches away from the use of a lifting bracket that is separate from the support bracket. The argument that McCown, Jr. et al. teaches away from Vache relies upon the assertion that because McCown, Jr. et al. discusses the advantages of "a welded together arrangement", May teaches away from Vache. This argument is without merit because, while the preferred embodiment of McCown, Jr. et al. does show a welded together arrangement, a statement indicating the desirability of having a welded together arrangement in no way criticizes, discredits, or otherwise discourages the solution of a jacking apparatus including a support brace located about the lifting bracket claimed. McCown, Jr. et al., therefore, in no way teaches away from Vache.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Pico whose telephone number is 571-272-5589. The examiner can normally be reached on 6:30AM - 3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EEP

Kathy Matecki

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